

FILED

STATE OF SOUTH CAROLINA 2019 NOV 21 P 2:29 IN THE GENERAL COURT OF JUSTICE

COUNTY OF HARNETT HARNETT CO., C.S.C. SUPERIOR COURT DIVISION

FILE NO. 19-CVS-

19CV502608

JOHN DEERE FINANCIAL, f.s.b. and  
DEERE & COMPANY,

Plaintiffs

v.

LEWIS FARMS, INC., and DAVID R.  
LEWIS

Defendants

COMPLAINT  
(COMP)(ACCT)(MNYO)  
(POPP)(CLMD)

Plaintiff, complaining of Defendants, Lewis Farms, Inc., and David R. Lewis, (collectively, "Defendants") says and avers:

1. Plaintiff John Deere Financial, f.s.b., formerly known as FPC Financial, f.s.b. ("JDF"), is a federal savings bank authorized and existing under the laws of the State of Wisconsin and doing business in Harnett County, North Carolina.

2. Plaintiff Deere & Company ("Deere") is a corporation authorized and existing under the laws of the State of Delaware and doing business in Harnett County, North Carolina.

3. Upon information and belief, Defendant Lewis Farms, Inc. ("Lewis Farms") is a corporation authorized and existing under the laws of the State of North Carolina, with a principal place of business in Harnett County, North Carolina.

4. Upon information and belief, Defendant David R. Lewis ("David Lewis") is a citizen and resident of Harnett County, North Carolina.

5. Upon information and belief, David Lewis is not in the military or on active duty status, and the filing of this action is not prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. § 501 *et seq.*

6. This Court has jurisdiction over all parties set forth herein.

7. Venue is proper in this Court.

**GENERAL ALLEGATIONS**

**Loan Contract No. -8923**

8. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

9. On or about June 14, 2017, for valuable consideration, Defendants executed and delivered to Deere a Loan Contract-Security Agreement in the original principal amount of \$560,604.76 ("Contract 1").

10. A copy of Contract 1 is attached as **Exhibit A**.

11. As Security for Contract 1, Defendants granted Deere a security interest in the following collateral (collectively, the "Contract 1 Collateral"):

a. 1795 12R30/23R15/24R15 Planter bearing serial number 1A01795AEHA770147;

b. 5085E Cab MFWD Utility Tractor bearing serial number 1LV5085ECGG401045;

c. 606C 6 Row Corn Head bearing serial number 1H00606CAHX795024;

d. 8270R Row Crop Tractor bearing serial number 1RW8270RCGP111204; and,

e. 2 Box Seed Tender Strobel Industries 230X Wagon bearing serial number 2B1422103.

12. The security interest in the Contract 1 Collateral is perfected by a copy of the UCC Financing Statement attached as **Exhibit B**.

13. Defendants owe Deere, jointly and severally, on Contract 1 the sum of \$494,863.98, plus interest at the rate of 4.70% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

### **Loan Contract No. -6438**

14. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

15. On or about October 27, 2016, for valuable consideration, Defendants executed and delivered to Deere a Loan Contract-Security Agreement in the original principal amount of \$505,470.34 ("Contract 2").

16. A copy of Contract 2 is attached as **Exhibit C**.

17. As security for Contract 2, Defendants granted Deere a security interest in the following collateral (collectively, the "Contract 2 Collateral"):

a. 37' Head Hauler on 800 Running Gear bearing serial number J130117;

b. 1520 Integral Drill bearing serial number A01520X765114;

c. 630 FD 30FT Flex Draper Cutting Platform bearing serial number 1H0630FDPF0775074;

d. 995 Moldboard Plow bearing serial number 1P00995ACGB011006; and

e. S670 STS Combine bearing serial number 1H0S670SLF0776465.

18. The security interest in the Contract 2 Collateral is perfected by a copy of the UCC Financing Statement attached as **Exhibit D**.

19. Defendants owe Deere, jointly and severally, on account of Contract 2 the sum of \$353,857.26, plus interest at the rate of 4.45% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

### **Loan Contract No. -0134**

20. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

21. On or about December 30, 2016, for valuable consideration,

Defendants executed and delivered to Deere a Loan Contract-Security Agreement in the original principal amount of \$158,118.40 ("Contract 3").

22. A copy of Contract 3 is attached as **Exhibit E**.

23. As security for Contract 3, Defendants granted Deere a security interest in the a T/C 16' Transition Conveyor bearing serial number BB32-2016 and a 50 Tobacco Harvester bearing serial number RL500491 (collectively, the "Contract 3 Collateral").

24. The security interest in the Contract 3 Collateral is perfected by a copy of the UCC Financing Statement attached as **Exhibit F**.

25. Defendants owe Deere, jointly and severally, on Contract 3 the sum of \$74,268.33, plus interest at the rate of 4.75% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

#### **Account No. -1299**

26. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

27. On or about June 29, 2016, for valuable consideration, Defendants executed and delivered to Deere a Loan Contract-Security Agreement in the original principal amount of \$62,966.65 ("Contract 4").

28. A copy of Contract 4 is attached as **Exhibit G**.

29. As security for Contract 4, Defendants granted Deere a security interest in a 2623 Folding Disk bearing serial number 1N02623XCG0765089 (the "Contract 4 Collateral").

30. The security interest in the Contract 4 Collateral is perfected by a copy of the UCC Financing Statement attached as **Exhibit H**.

31. Defendants owe Deere, jointly and severally, on Contract 4 the sum of \$16,942.26, plus interest at the rate of 4.50% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate

until paid in full.

**Loan Contract No. -7366**

32. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

33. On or about July 6, 2017, for valuable consideration, Defendants executed and delivered to Deere a Loan Contract-Security Agreement in the original principal amount of \$36,279.45 ("Contract 5").

34. A copy of Contract 5 is attached as **Exhibit I**.

35. As security for Contract 5, Defendants granted Deere a security interest in a KMC 68-08-38R 8 Row Ripper Bedder bearing serial number 89755 (the "Contract 5 Collateral").

36. The security interest in the Contract 5 Collateral is perfected by a copy of the UCC Financing Statement attached as **Exhibit J**.

37. Defendants owe Deere, jointly and severally, on account of Contract 5 the sum of \$18,535.98, plus interest at the rate of 5.00% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

**JDF Credit Account No. -1711**

38. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

39. On or about January 16, 2018, for valuable consideration, Defendants established a revolving account with JDF for the purpose of purchasing goods and services ("JDF Credit Account No. -1711"). On or about January 17, 2018, for valuable consideration, Defendant David Lewis executed and delivered to JDF a Purchase Receipt ("Contract 6") for the purchase of a 00062 Gator XUV bearing serial number 1M0825GEKHM134654 (the "Contract 6 Collateral") and requested that purchase be charged to JDF Credit Account No. -1711.

40. A copy of Contract 6 is attached as **Exhibit K**.

41. Additional purchases were also charged to this account in accordance with the terms and conditions in place.

42. Defendant David Lewis owes JDF on account of JDF Credit Account No. -1711 the sum of \$11,413.50 plus interest in accordance with the terms and conditions in place per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

**Loan Contract No. -5318**

43. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

44. On or about April 22, 2014, for valuable consideration, Donnie R. Lewis (deceased) and Defendant Lewis Farms executed and delivered to Deere a Loan Contact-Security Agreement in the original principal amount of \$95,063.28 ("Contract 7").

45. A copy of Contract 7 is attached as **Exhibit L**.

46. As security for Contact 7, Defendant Lewis Farms granted Deere a security interest in a 2623 Folding Disc bearing serial number 1N02623XAE0755663 and a 5085E Cab Utility Tractor bearing serial number 1LV5085EJDY140611 (collectively, the "Contract 7 Collateral").

47. The security interest in the Contact 7 Collateral is perfected by a copy of the UCC Financing Statement attached as **Exhibit M**.

48. On or about July 26, 2016, Defendant David Lewis executed and delivered to Deere a Financial Statement for Agricultural & Commercial Use of Equipment ("Financial Statement") and agreed to be jointly liable for the Contract 7 debt along with Lewis Farms.

49. A copy of the Financial Statement is attached as **Exhibit N**.

50. Defendants owe Deere, jointly and severally, on account of Contract 7 the sum of \$288.09, plus interest at the rate 3.95% per annum from and

after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

51. Contract 1, Contract 2, Contract 3, Contract 4, Contract 5, Contract 6, and Contract 7 shall be referred to collectively as the "Contracts."

52. The Contract 1 Collateral, Contract 2 Collateral, Contract 3 Collateral, Contract 4 Collateral, Contract 5 Collateral, Contract 6 Collateral and Contract 7 Collateral shall be referred to collectively as the "Collateral."

53. Pursuant to valid cross-collateralization provisions in each of the Contracts (except Contract 6), each item of the Collateral (except Contract 6 Collateral) secures the debt arising under each of the Contracts.

#### **Account No. -5015**

54. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

55. On or about May 15, 2018, for valuable consideration, Defendants established a revolving account with JDF for the purpose of purchasing goods and services ("Account 5015").

56. The account is evidenced by the Certification of Beneficial Owners attached as **Exhibit O**.

57. Defendants owe JDF, jointly and severally, on Account 5015 the sum of \$45,390.35, plus interest at the rate established in the terms and conditions per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

#### **FIRST CLAIM FOR RELIEF**

##### **(BREACH OF CONTRACTS)**

58. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

59. The Contracts are past due and in default.

60. Defendants have materially breached and defaulted in their obligations under the Contracts.

61. As a direct and proximate result of the material breach of the Contracts by Defendants, Plaintiffs have been financially damaged.

62. Plaintiffs demanded payment in full on the Contracts in the Demand Letter dated October 24, 2019, but Defendants have failed and refused to pay the same.

63. A copy of the Demand letter is attached as **Exhibit P**.

64. Plaintiffs are entitled to recover of Defendants, jointly and severally, the sums set forth above with post-judgment interest accruing at the legal rate of 8% per annum from the date of entry of judgment until paid in full.

### **SECOND CLAIM FOR RELIEF**

#### **(ACCOUNT STATED)**

65. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

66. Pursuant to Account -5015, JDF extended to Defendants a line of credit and established an account (the "Account").

67. Plaintiff JDF sold on credit to Defendant s certain goods and/or services for which Plaintiff has not been paid.

68. Defendants are in default under the Account.

69. There is due and owing on Account 5015 the sum of \$45,390.35, plus interest at the rate allowed in the terms and conditions per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

70. Plaintiffs demanded payment in full on the Account in the Demand Letter dated October 24, 2019, but Defendants have failed and refused to pay the same.



### **THIRD CLAIM FOR RELIEF**

#### **(RECOVERY OF ATTORNEYS' FEES)**

71. Plaintiffs are entitled to recover of Defendants, jointly and severally, attorneys' fees in the amount of 15% of the outstanding balances owing on the Contracts and Account as of the date this Complaint is filed.

72. Pursuant to the provisions of North Carolina General Statutes Section 6-21.2, demand was made upon Defendants and Defendants were notified that attorneys' fees in the amount of 15% of the outstanding indebtedness owing on the Contracts and Account would be collected if payment of the outstanding balances were not made within five days from the date of said notification.

73. The outstanding balances have not been paid and more than five days have elapsed since the mailing of the Demand Letter.

74. Pursuant to the provisions of North Carolina General Statutes Section 6-21.2, demand is hereby made again upon Defendants and Defendants are notified that attorneys' fees in the amount of 15% of the outstanding indebtedness owing on the Contracts and Account will be requested of the Court if payment of the outstanding balances is not made within five days from the date of service of this Complaint upon you.

### **FOURTH CLAIM FOR RELIEF**

#### **(POSSESSION)**

75. The allegations contained in the foregoing paragraphs are incorporated by reference as if completely set forth.

76. The terms of the Contracts and Account -5051 expressly state that, upon default, Plaintiffs are entitled to possession of the Collateral described therein.

77. The obligations owing on the Contracts and Account -5051 (collectively, the "Loan Documents") are cross-collateralized with the Collateral.

78. Defendants have defaulted on their respective obligations to the

Plaintiffs arising under the Loan Documents.

79. Demand for payment or return of the Collateral has been made by Plaintiffs, but Defendants have failed and refused to comply with same.

80. Upon information and belief, Defendants remain in possession of the Collateral.

81. As a result, Plaintiffs are entitled to possession of the Collateral in accordance with their state law and contractual rights.

WHEREFORE, Plaintiffs respectfully pray unto the Court:

1. That Plaintiff John Deere Financial f.s.b. have and recover the following:

a. Judgment against Defendant David R. Lewis on JDF Credit Account No. -1711 for the sum of \$11,413.50 plus interest at the rates allowed in the terms and conditions per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

b. Judgment against Defendants, jointly and severally, on Account -5015 for the sum of \$45,390.35, plus interest at the rate of Prime + 7.55% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

2. That Plaintiff Deere have and recover of the Defendants, jointly and severally, the following:

a. Judgment on Loan Contract Account No. -8923 for the sum of \$494,863.98, plus interest at the rate of 4.70% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

b. Judgment on Loan Contract Account No. -6438 for the sum of \$353,857.26, plus interest at the rates allowed in the terms and conditions per annum from and after October 24, 2019 until date of entry of judgment and

thereafter at the legal rate until paid in full.

c. Judgment on Loan Contract Account No. -0134 for the sum of \$74,268.33, plus interest at the rate of 4.75% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

d. Judgment on Loan Contract Account No. -1299 for the sum of \$16,942.26, plus interest at the rate of 4.50% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

e. Judgment on Loan Contract Account No.-7366 for the sum of \$18,535.98, plus interest at the rate of 5.00% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

f. Judgment on Loan Contract Account No. -5318 for the sum of \$288.09, plus interest at the rate 3.95% per annum from and after October 24, 2019 until date of entry of judgment and thereafter at the legal rate until paid in full.

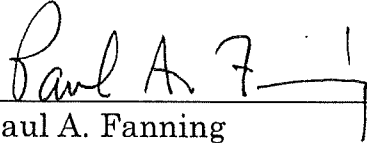
3. That Plaintiffs have and recover of the Defendants, jointly and severally, the reasonable attorneys' fees and legal expenses in the amount of 15% of the balance owing on the date of commencement of this action.

4. That Plaintiffs have and recover of the Defendants, jointly and severally, the costs of this action.

5. That Defendants be ordered to immediately deliver possession of the Collateral to Plaintiffs so that Plaintiffs may dispose of same pursuant to their Loan Documents, the related security documents, and applicable state law.

6. That Plaintiffs have and recover such other and further relief as to the Court may seem just and proper.

This the 18th day of November.

A handwritten signature in cursive script, reading "Paul A. Fanning", positioned above a horizontal line.

Paul A. Fanning

N.C. State Bar I.D. No.: 025477

E-mail: paf@wardandsmith.com

For the firm of

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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF HARNETT

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NO. 19-CVS-\_\_\_\_\_

JOHN DEERE FINANCIAL, f.s.b. and )  
DEERE, )

Plaintiffs )

v. )

LEWIS FARMS, INC., and DAVID R. )  
LEWIS )

Defendants )

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1019CV 02808

VERIFICATION

KATHLEEN KLAG-BANKS, being duly sworn, deposes and says that she is Senior Litigation Administrator of Deere Credit Services, Inc., servicing agent for Plaintiffs, and as such is authorized to make this verification; that she has read the foregoing COMPLAINT, and the same is true of her own knowledge, except as to those matters and things stated on information and belief, and, as to those, she believes them to be true.

Kathleen Klag-Banks  
Kathleen Klag-Banks

Polk COUNTY, IOWA

Sworn to (or affirmed) and subscribed before me this day by KATHLEEN KLAG-BANKS.


Date 11/14/19

(Official Seal)

Melissa Olson  
Signature of Notary Public

My commission expires: 2/14/21

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ND: 4832-2287-3260, v. 1

 MELISSA A. OLSON  
Commission Number #720958  
My Commission Exp. 2/14/20 21